UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AUTHORS GUILD, DAVID BALDACCI, MARY BLY, MICHAEL CONNELLY, SYLVIA DAY, JONATHAN FRANZEN, JOHN GRISHAM, ELIN HILDERBRAND, CHRISTINA BAKER KLINE, MAYA SHANBHAG LANG, VICTOR LAVALLE, GEORGE R.R. MARTIN, JODI PICOULT, DOUGLAS PRESTON, ROXANA ROBINSON, GEORGE SAUNDERS, SCOTT TUROW, and RACHEL VAIL, individually and on behalf of others similarly situated,	No. 1:23-cv-08292-SHS-OTW
Plaintiffs,	**PUBLIC REDACTED VERSION**
v.	
OPENAI INC., OPENAI LP, OPENAI LLC, OPENAI GP LLC, OPENAI OPCO LLC, OPENAI GLOBAL LLC, OAI CORPORATION LLC, OPENAI HOLDINGS LLC, OPENAI STARTUP FUND I LP, OPENAI STARTUP FUND GP I LLC, and OPENAI STARTUP FUND MANAGEMENT LLC,	
Defendants.	
JONATHAN ALTER, KAI BIRD, TAYLOR BRANCH, RICH COHEN, EUGENE LINDEN, DANIEL OKRENT, JULIAN SANCTON, HAMPTON SIDES, STACY SCHIFF, JAMES SHAPIRO, JIA TOLENTINO, and SIMON WINCHESTER, on behalf of themselves and all others similarly situated,	No. 1:23-cv-10211-SHS-OTW
Plaintiffs,	
v.	
OPENAI, INC., OPENAI GP, LLC, OPENAI, LLC, OPENAI OPCO LLC, OPENAI GLOBAL LCC, OAI CORPORATION, LLC, OPENAI HOLDINGS, LLC, and MICROSOFT CORPORATION,	
Defendants.	

NICHOLAS A. BASBANES and NICHOLAS NGAGOYEANS (professionally known as Nicholas Gage), individually and on behalf of all others similarly situated, Plaintiffs, v. MICROSOFT CORPORATION, OPENAI, INC., OPENAI GP, LLC, OPENAI HOLDINGS, LLC, OAI CORPORATION, LLC, OPENAI GLOBAL, LLC, OPENAI, LLC, and OPENAI OPCO LLC, Defendants.	No. 1:24-cv-00084-SHS-OTW

DECLARATION OF ASHLEY PANTULIANO IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' LETTER BRIEF

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I, Ashley Pantuliano, hereby declare as follows:

     1.   I am a Deputy General Counsel at OpenAI OpCo, LLC. I have been employed by OpenAI OpCo, LLC since November 2022. I make these statements based on personal knowledge, and if called upon to testify as to the facts stated in this declaration, I would and could testify thereto.

     2.   The OpenAI-Microsoft Data Working Group was ███████████████████

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██████████████████████████████████ (I understand a version of this was filed as Ex. 1 to the motion filed by the *Authors Guild* plaintiffs regarding the Data Working Group.)

     3.   I have been a member of the Data Working Group since its inception and remain a member as of this writing.

     4.   The purpose of the Data Working Group is ████████████████████

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████████ (*See id.*)

    5. The first meeting of the Data Working Group was held on February 9, 2023.

       a. At that time, and continuing to today, OpenAI understood that it had a common interest with Microsoft relating to ███████████████████

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[1] In this declaration, I refer to OpenAI, Inc. and OpenAI OpCO, LLC collectively as "OpenAI."

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b. Also at the time, OpenAI and Microsoft had been sued in a putative class action lawsuit filed on November 3, 2022 asserting violations of the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201-1205, and other claims relating to data acquisition practices. (*See Doe 1 et al. v. Github, Inc. et al.*, Case No. 4:22-cv-06823-JST (N.D. Cal. filed Nov. 3, 2022), ECF No. 1, attached hereto as Ex. B.) The lawsuit was later consolidated with *Doe 3 et al. v. Github, Inc. et al.*, Case No. 4:22-cv-07074-JST (N.D. Cal. filed Nov. 10, 2022). The consolidated lawsuit remains pending.

6. All of the OpenAI employees that have served or currently serve as members of the Data Working Group are attorneys and members of the OpenAI legal team, and have acted at all times in a legal capacity while part of the Data Working Group. Tom Rubin, an OpenAI lawyer who is and has always been a member of the OpenAI legal team, is a member of the Data Working Group, and has acted at all times in a legal capacity while part of the Data Working Group. None of the current or requested custodians in either the *Authors Guild* or *New York Times* cases have ever been a member of the Data Working Group.[2]

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[2] Collectively, I understand the current custodians or requested custodians in the two actions are: Nick Ryder, Alex Paino, Chris Koch, Ian Sohl, Barret Zoph, John Schulman, Dario Amodei, Ben Mann, Tom Brown, Alec Radford, Chris Hallacy, Henrique Ponde de Oliveira Pinto, Lilian Weng, Vinnie Monaco, Johannes Heidecke, Lama Ahmad, Peter Welinder, Nick Turley, Angela Jiang, Sam Altman, Mira Murati, Greg Brockman, Peter Hoeschele, Varun Shetty, James Dyett,

7.   The OpenAI members of the Data Working Group are working in a legal role. Their responsibilities in serving on the Data Working Group related to ████████████ ██ ██████████████████████. The use of data for training large language models can invoke many legal issues, including, for example, issues relating to intellectual property, privacy, and contract law.

8.   To my knowledge and belief, all of the Microsoft employees that I have interacted with as members of the Data Working Group are members of the Microsoft legal team.

9.   The Data Working Group exclusively serves a legal, not business, purpose. The Data Working Group is not and has not been responsible for ████████████████ ██ ██ ██ ████████████████████████████ ██.

10.   The email thread produced at OPCO_NEWS_0000669 / OPCO_SDNY_0012381[3] is not discussing the Data Working Group. The thread is instead discussing a separate meeting related to data acquisition and was incorrectly labeled with the subject line "Re: Data working group." In fact, both OpenAI and Microsoft clarified on February 3, 2023 that the meeting referred to in OPCO_NEWS_0000669 /

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Alex Passos, Peter Deng, Suchir Balaji, Michael Lampe, Ethan Stock, James Betker, William Fedus, Daniel Kokotajlo, Brad Lightcap, Ryan Lowe, William Saunders, Ilya Sutskever, and Wojciech Zaremba.

[3] I understand a copy of this document was filed as Exhibit 3 to the Motion in the *New York Times* case and Exhibit 2 to the Motion in the *Authors Guild* case, respectively.

OPCO_SDNY_0012381 incorrectly referenced the Data Working Group, and was *not* in fact a

meeting of the Data Working Group contemplated under, and defined in, the Agreement. (*See*

Ex. C.)

I declare under penalty of perjury under the laws of the United States of America that the

foregoing is true and correct.

Executed this 21st day of November, 2024 in San Francisco, CA.

By: _____

Ashley Pantuliano
Deputy General Counsel
OpenAI